

Appl No 10/805,032  
Amdt dated October 31, 2006  
Reply to Office Action of May 31, 2006

**Amendments to the Drawings:**

Figure. 9 is being amended to correct the reference numerals to correspond with the reference numerals referred to in the specification as originally filed. No new subject matter is being introduced. Amendments to Figure. 9 are indicated on the attached Annotated Sheet of drawing.

The attached Replacement Sheet of drawings includes changes to Figure. 9 only. The Replacement Sheet replaces original Figure. 9.

Acceptance of the replacement drawings is respectfully requested.

### **Remarks/Arguments**

This amendment is in response to the Office Action dated May 31, 2006.

Claims 1, 2 and 4 remain in this application. Claim 3 has been canceled. New claims 5-8 have been added and find support in the Specification at Pages 3-5.

Claims 3 and 4 have been provisionally rejected based on obviousness-type double patenting over copending application No. 09/937,114. In view of the cancellation of claim 3 and the amendment of claim 4 it is believed this rejection is moot. If not, Applicants will file an appropriate terminal disclaimer if needed upon allowance of claim 4.

Claim 1 has been provisionally rejected based on obviousness-type double patenting over copending application No. 10/110,325. Applicants will file an appropriate terminal disclaimer if needed upon allowance of claim to overcome the rejection.

Claims 1, 2, and 4 have been rejected under 35 USC 102(b) in view of GB 2,302,042 A. Applicants disagree.

The present invention requires a thermoplastic composition be molded to the periphery of at least the filtrate screen layer and that layer may have a thickness greater than screen on which it is formed. Those layers are arranged with a plurality of membrane layers in a vertical stack which is then heated to selectively melt the thermoplastic and form the desired fluid flow paths.

The reference fails to teach each and every element of the present invention and as such is not an anticipatory reference. In particular, the reference fails to teach the use of a thermoplastic that is formed on the periphery of the screen and which has a thickness greater than that of the filter or screen on which it is formed.

The reference clearly teaches that the EVA copolymer is placed "between" the layers not through the layers. See GB 2302042, Abstract, line 3, "positioned between the elements"; Page 1 third paragraph "between the filtration medium and support material"; Page 2, line 9, "positioned between the structural elements" and line 35 "between"; Page 4, lines 27-28 "positioned between the filtration media"; Page 5, lines 1-2 "between the filtration media"; Page 6, lines 16-17 "between the support materials"; line 34 "positioned between the membrane"; Page 7 lines 12-13 "positioned between the membrane and the support material"; and claim 1 line 5 "positioned between said structural elements".

The only statement it has to embedding the copolymer layer is at pages Page 6, line 27 and page 7, lines 17-19 in which an additional diffusion layer between the membrane and support layer may preferably be "partially embedded in the copolymer **positioned between the membrane and the support material.**" (Applicants emphasis).

Additionally it is clear that the copolymer layer of the reference does not extend beyond the thickness of the layer on which it is formed as is required by the present claims. Contrary to the unsupported assertion in the Office action, the copolymer layer of the reference does not "penetrate several layers of the membranes and screens". At best, it is partially embedded into a diffusion layer that is between the filter and support layers as is clearly stated in the reference. It is clear that it does not have a thickness extending beyond the layer on which it is formed as is required by the present claims.

The only statement it has to embedding the copolymer layer is at pages Page 6, line 27 and page 7, lines 17-19 in which an additional diffusion layer between the membrane and support layer

may preferably be "partially embedded in the copolymer **positioned between the membrane and the support material.**" (Applicants emphasis).

Contrary to the statement made in the Office Action, it is clear that the reference fails to teach the material extending beyond any layer, never mind the screen on which it is formed as is required by the present claims. At best, it states that at best a middle layer can be partially embedded into the copolymer layer that is between the filter and support layers.

As the standard for anticipation is one of strict identity and "the reference must teach every aspect of the claimed invention either explicitly or inherently." (MPEP section 706.02IV, lines 6 and 7) and the cited reference has failed to teach the claimed elements of the present claims, this reference is not and cannot be an anticipatory reference. As such, the rejection based on 35 USC 102(b) is respectfully requested to be withdrawn as it fails to provide a reference which contains all of the claimed elements of the present claims and therefore no basis for rejection under 35 USC 102 has been properly made.

Claims 1, 2, and 4 have been rejected under 35 USC 103(a) over Rogemont (US 4,701,234) in view of the GB reference. Applicants disagree.

The office action states that Rogemont fails to teach or suggest a thermoplastic but that the GB reference does and that it would have been obvious to substitute the EVA copolymer of the GB reference for the raw, cured in place silicone of Rogemont. The Office action also notes the reference fails to teach or suggest melting the thermoplastic to seal the layers together. Applicants note the British reference as well fails to teach or suggest this feature.

The office action's position is based upon the disclosure in the GB reference that its EVA copolymer has low extractables and layers can be sealed together into one body using the material. The Office Action fails to consider the clear teaching that the EVA layer of the GB reference is used between layers of the device and it uses its good adhesive properties to bond the layers together.

What teaching is present to motivate one skilled in the art to use the EVA material of the GB reference in the process of Rogemount? The skilled artisan would have to ignore the teachings of the GB disclosure regarding the placement of the EVA between the layers and using its excellent adhesion properties to hold the layers together, focus only on the EVA material itself, and somehow arrive at the conclusion that it could be compressed under pressure as taught by Rogemount to fill the mesh of Rogemount. One of ordinary skill in the art would not have been suggested or motivated to use the GB EVA in the Rogemount process as suggested in the present office action.

As stated by the Federal Circuit in *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1986), "One cannot use hindsight reconstruction to pick and choose from isolated disclosures in the prior art to deprecate the claimed invention."

Of similar import is *In re Wesslau*, 147 U.S.P.Q. 391, 393 (CCPA 1965):

"It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art." (Emphasis added).

Even if it would have been obvious to use the Eva of the GB reference instead fo the rubber of Rogemont, the combination of the two references would not have led to the claimed invention as they still fail to teach or suggest melting the thermoplastic to form the selective fluid flow paths and to bond the layers together. Instead one from the cited combination use either the adhesiveness of the GB reference

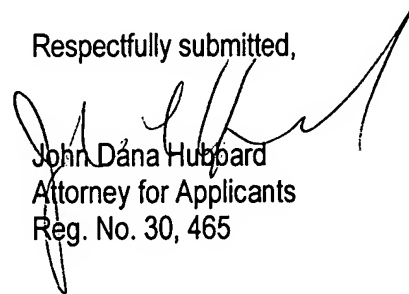
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material and/or pressure of Rogemont to hold the layers together. However that is not the presently claimed invention. As such it is believed the prima facie case of obviousness has been rebutted and the rejection should be withdrawn.

For the reasons stated above as to claims 1, 2 and 4, new claims 5-8 are in condition for allowance over the same references.

Reconsideration and allowance of the claims is respectfully requested in view of the foregoing amendment and remarks.

Respectfully submitted,

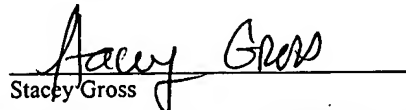


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The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on **October 31, 2006**.



Stacy Gross

